



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 181218999-9402-02]**

**RIN 0648-XW015**

**Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast**

**Groundfish Fishery; 2019 Tribal Fishery Allocations for Pacific Whiting;**

**Reapportionment Between Tribal and Non-tribal Sectors**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Inseason reapportionment of tribal Pacific whiting allocation.

**SUMMARY:** This document announces the reapportionment of 40,000 metric tons of Pacific whiting from the tribal allocation to the non-tribal commercial fishery sectors via automatic action on September 13, 2019. This reapportionment is to allow full utilization of the Pacific whiting resource.

**DATES:** The reapportionment of Pacific whiting was applicable from 12 p.m. local time, September 13, 2019, through December 31, 2019. Comments will be accepted through *[insert date 15 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2019-0001 by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0001](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0001). Click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Barry A. Thom, Regional Administrator, West Coast Region, NMFS, 1201 NE Lloyd Center Blvd Suite #1100, Portland, OR 97232, Attn: Stacey Miller.

Instructions: Comments sent by any other method to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record. All personal identifying information (*e.g.*, name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

### **Electronic Access**

This document is accessible online at the Office of the Federal Register's Website at <http://www.gpo.gov/fdsys/search/home.action>. Background information and documents are available at NMFS' West Coast Region website at

<https://www.fisheries.noaa.gov/species/pacific-whiting#management>.

**FOR FURTHER INFORMATION CONTACT:** Stacey Miller (West Coast Region,

NMFS), phone: 503-231-6290 or e-mail: *Stacey.Miller@noaa.gov*.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

#### *Pacific Whiting*

Pacific whiting (*Merluccius productus*) is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) and a relatively short life span compared to other groundfish species. Pacific whiting has the largest annual allowable harvest levels (by volume) of the more than 90 groundfish species managed under the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. The coastwide Pacific whiting stock is managed jointly by the United States and Canada, and mature Pacific whiting are commonly available to vessels operating in U.S. waters from April through December. Background on the stock assessment, and the establishment of the 2019 Total Allowable Catch (TAC), for Pacific whiting was provided in the final rule for the 2019 Pacific whiting harvest specifications, published May 10, 2019 (84 FR 20578). Pacific whiting is allocated to the Pacific Coast treaty tribes (tribal fishery) and to three non-tribal commercial sectors: the catcher/processor cooperative (C/P Coop), the mothership cooperative (MS Coop), and the Shorebased Individual Fishery Quota (IFQ) Program.

This document announces the reapportionment of 40,000 metric tons (mt) of Pacific whiting from the tribal allocation to the non-tribal commercial sectors on

September 13, 2019. Regulations at 50 CFR 660.131(h) contain provisions that allow the Regional Administrator to reapportion Pacific whiting from the tribal allocation, specified at 50 CFR 660.50, that will not be harvested by the end of the fishing year to other sectors.

#### *Pacific Whiting Reapportionment*

For 2019, the Pacific Coast treaty tribes were allocated 77,251 mt of Pacific whiting. The best available information on September 13, 2019, indicated that less than 5,000 mt of the 2019 allocation had been harvested, and at least 40,000 mt of the tribal allocation would not be harvested by December 31, 2019. As required under the 2017 Endangered Species Act (ESA) Section 7(a)(2) biological opinion on the effects of the Pacific Coast Groundfish Fishery Management Plan on listed salmonids, NMFS considered the number and bycatch rate of Chinook salmon taken by the Pacific whiting fishery sectors prior to reapportionment. Based on the best available information in early September 2019, NMFS determined there was little risk that the reapportionment would cause the Pacific whiting sector fisheries to exceed the guideline limit of 11,000 Chinook salmon under current regulations and practices. In early September, incidental take of Chinook salmon by the non-tribal sector was 12 percent of the guideline limit. While the incidental take of Chinook salmon was higher compared to the same period in the previous two years, the total take this year is still well below the guideline limit.

To allow for increased utilization of the resource, on September 13, 2019, NMFS reapportioned 40,000 mt from the Tribal sector to the Shorebased IFQ Program, C/P

Coop, and MS Coop in proportion to each sector's original allocation. Reapportioning this amount is expected to allow for greater attainment of the TAC while not limiting tribal harvest opportunities for the remainder of the year. NMFS provided notice of the reapportionment on September 13, 2019, via emails sent directly to fishing businesses and individuals, and postings on the NMFS West Coast Region website.

Reapportionment was effective the same day as the notice.

The amounts of Pacific whiting available for 2019 before and after the reapportionment are described in the table below.

**Table 1 –2019 Pacific Whiting Allocations**

<b>Sector</b>	<b>Initial 2019 Allocation (mt)</b>	<b>Final 2019 Allocation (mt)</b>
Tribal	77,251	37,251
C/P Coop	123,312	136,912
MS Coop	87,044	96,644
Shorebased IFQ Program	152,326.5	169,126

### **Classification**

NOAA's Assistant Administrator for Fisheries (AA) finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment pursuant to 5 U.S.C. 553(b)(B), because such notification would be impracticable and contrary to the public interest. As previously noted, NMFS provided

actual notice of the reapportionment to fishery participants at the time of the action. Prior notice and opportunity for public comment on this reapportionment was impracticable because NMFS had insufficient time to provide prior notice between the time the information about the progress of the fishery needed to make this determination became available and the time at which fishery modifications had to be implemented in order to allow fishery participants access to the available fish during the remainder of the fishing season. For the same reasons, the AA also finds good cause to waive the 30-day delay in effectiveness for these actions, required under 5 U.S.C. 553(d)(3).

These actions are authorized by §§ 660.55 (i), 660.60(d), and 660.131(h) and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 7001 *et seq.*

Dated: November 21, 2019.

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Jennifer M. Wallace,  
Acting Director,  
Office of Sustainable Fisheries,  
National Marine Fisheries Service.

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